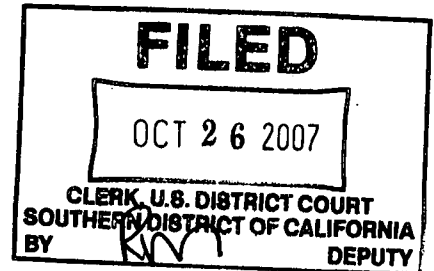


MC-275

Name Rosita Frausto
 Address 9000 Cottonwood Avenue
Santee, Ca 92071
Las Colinas Detention Facility
 CDC or ID Number #7761577

2004	1983
FILING FEE PAID	
Yes	No <input checked="" type="checkbox"/>
HYP MOTION FILED	
Yes	No <input checked="" type="checkbox"/>
COPIES SENT TO	
Court <input checked="" type="checkbox"/>	ProSe <input type="checkbox"/>



U.S. District Court
Southern District of Ca.
 (Court)

<u>Rosita Frausto</u> Petitioner	vs.	<u>The State of California</u> Respondent
-------------------------------------	-----	--

PETITION FOR WRIT OF HABEAS CORPUS

No. '07CV 2073 BEN CAB
 (To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court [as amended effective January 1, 2007]. Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

Page 1 of 6

This petition concerns:

- ☒ A conviction
 ☐ Parole
☒ A sentence
 ☐ Credits
☐ Jail or prison conditions
 ☐ Prison discipline
☐ Other (specify): _____

1. Your name: Rosita Frausto
 2. Where are you incarcerated? Las Colinas Detention Facility
 3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

Residential burglary, Commercial burglary, Credit card fraud, and grand theft

- b. Penal or other code sections: 484G(A)PC, 459 PC 5x, 475 (B)PC

- c. Name and location of sentencing or committing court: The State of California Superior Court, Central Division

- d. Case number: SCD 197447

- e. Date convicted or committed: May 5, 2006

- f. Date sentenced: September 7, 2007

- g. Length of sentence: 5 years, (435) days of time served, (high term)

- h. When do you expect to be released? N/A

- i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address:

Marcee Chipman 222 Ash, San Diego, California 92101
(619) 702-3848

4. What was the LAST plea you entered? (check one)

☐ Not guilty
 ☒ Guilty
 ☐ Nolo Contendere
 ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

☐ Jury
 ☐ Judge without a jury
 ☐ Submitted on transcript
 ☐ Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

State Court decision was based in a unreasonable determination of the facts in light of the evidence and facts presented in petitioner preliminary hearing and witness statements.

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

While out on bail on several other minor charges (poss. of control substance, poss. of stolen property, poss. of deadly weapon). Petitioner had a court date on May 5, 2006, when Petitioner arrived in the courtroom, petitioner observed detective, Julie Adams, whom petitioner had come in contact with several weeks earlier, while retrixing her jewelry at the police station in, La Jolla, Ca. During which time petitioner name was called, petitioner observed Detective Adams, approaching the bench beside her also, before the Judge, Officer Adams, was given an introduction by the court prosecuting Attorney to speak, Officer Adams, began, basically persuading the Judge stating that petitioner was a possible suspect in a residential burglary, that she, Detective Adams had been assigned to. Petitioner, bail was then revoked, and petitioner was then taken to female adult detention facility in Santee, Ca. (Las Colinas) and then booked on (4)

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

"28 U.S.C. § 2254(d) A state court's decision is an unreasonable application of federal law if it correctly identifies the governing rule, but then applies to a new set of facts in an objective unreasonable way or if it extends a clearly established legal principle from the United

pg 3 of 6 (2) a

(a) continuance

charges; residential burglary, commercial burglary, credit card fraud and grand theft, along with the charges: petitioner was on bail for, which was, (3) charges: possession of control substance, possession of stolen property and possession of an deadly weapon being that of an (letter opener), petitioner, believes the possession of the letter opener, was dropped.

Alternate Public Defender, Marcee Chipman, was assigned to my case, and also present in court on May 5, 2006. Ms. Chipman, scheduled a pro-visit with petitioner shortly after, while in custody at L.C. D.F. During that time petitioner requested a copy of petitioner's discovery, and was told by Ms. Chipman, that petitioner, discovery paper's would serve petitioner, no means, as for as petitioner case was concerned. Petitioner then stated to Attorney Chipman, that under no circumstances, was petitioner associated with this crime.

In August of 2006, petitioner, was called to court for an preliminary hearing, on said charges of residential burglary, commercial burglary, credit card fraud and grand theft. The "victim" whom reported crime was present at the hearing. When the "victim", took the stand she was cross examined by the prosecutor as well as attorney Chipman. While under oath the "victim" was asked a series of questions as follows;

- (1) Did victim "recognize" co-defendant: Rosita Frausto, present in this room dressed in tans to your right? "NO"
- (2) "Victim" was asked did she see petitioner in her home the day she called 911? "NO"
- (3) Did "victim" see petitioner anywhere around, in front/back, down the street/alley of victims home that day? "NO"

pg 3 of 6 (3) a

(a) continuance

(4) Victim was asked had she ever seen petitioner in her neighborhood in the past or at present? "NO"

(5) Victim was asked did she recognize petitioners' name, Rosita Trausto? "NO"

(6) Victim, was asked was victim absolutely positive that she, victim, do not recognize, petitioner? "Yes"

The victim answered "NO" to the first (5) questions and "Yes" to the (6th) question.

pg 3 of 6 (1) b

(b) continuance

States Supreme Court in a way that is objectively unreasonable.
Hernandez v Small 282 F.3d 1132, 1142 (9th Cir. 2000).

It is a settled rule of constitution construction that, if the apparent conflict, it is the duty of the courts to harmonize them if this can be reasonably done without distorting the meaning of any provision must be read with direct reference to every other which relates to the same subject, and so read, if possible as to avoid repugnancy.

Hammond v McDonald (App. 2nd District 1942), 49 Cal App.2d 671, 122 P. 2d 332 Constitutional Law ^{art} 15

7. Ground 2 or Ground _____ (if applicable):

MC-275

Ineffective assistance of Counsel: Petitioner states that petitioner was reluctant to plead guilty and (2) conflict of interest: petitioner was advised by counsel that an plea of guilt would be petitioner best choice.

a. Supporting facts:

Following after the preliminary hearing, petitioner received another pro-visit with attorney chipman while being housed in L.C.D.F., the month of September 2006, during that time, petitioner stressed that these charges should be set for a trial setting and that petitioner was in grave need of petitioner discovery along with an copy of the preliminary findings during which time attorney chipman, flat out stated "NO", that the documents were entirely too much paperwork, Ms. chipman, went on to state, out of nowhere, pertaining to the co-defendant that I knew nothing of. That often do male defendants fail to appear, and as a result the D.A. will not be satisfied until someone is charged with the crime.

While waiting in holding cell for final sentencing on 10/19/07, petitioner was approached by (2) L.C.D.F. inmates, (Rosa Jordan, Barbaragaskin), returning from court process. Ms. Jordan explained to petitioner that petitioners' attorney discussed petitioner case with Ms. Jordans' relative (grandmother) present in court. Ms. Jordan questioned petitioner of petitioner last name, is Frausto being sentenced to five years,

b. Supporting cases, rules, or other authority:

Faea v Sunn Ed at 864-65 grossly deficient performance by counsel and resultant prejudice, attorney gross mischaracterization of petitioner when speaking to the court and district D.A. (placing on client with D.A. criminal crime investigation.)

pg 4 of 6 (2) a

(a.) Continuance

five charges. While in court room, petitioner informed attorney Chipman on the above referenced. Ms. Chipman appeared to have no knowledge explaining to petitioner that, "such actions not practiced, therefore she can't do anything." Petitioner informed attorney Chipman, that inmates referred to petitioner attorney to be that of a male not Female. While Ms. Chipman approached who appeared to be a file clerk counsel, she stated to petitioner, "What are you trying to say or get at?" File clerk confirmed to Ms. Chipman, petitioner statement to be true, male counsel member discussed petitioner case to an civilian present in court, in error. Ms. Chipman explained to petitioner, male counsel to, "Be new, made a mistake because there were three inmates with same first name." petitioner replied, such counsel error not responsibility of petitioner. Attorney Marcee Chipman concluded by commenting, "Look, Why don't you just shut up?!" as she proceeded walking toward civilians in court discussing petitioner case.

8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes. ☒ No. If yes, give the following information:
- a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"): _____
- b. Result _____ c. Date of decision: _____
- d. Case number or citation of opinion, if known: _____
- e. Issues raised: (1) _____
- (2) _____
- (3) _____
- f. Were you represented by counsel on appeal? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known: _____
9. Did you seek review in the California Supreme Court? ☐ Yes. ☒ No. If yes, give the following information:
- a. Result _____ b. Date of decision: _____
- c. Case number or citation of opinion, if known: _____
- d. Issues raised: (1) _____
- (2) _____
- (3) _____
10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal: _____
11. Administrative Review:
- a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review: _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- b. Did you seek the highest level of administrative review available? ☒ Yes. ☐ No.
Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or **issue** in any court? ☐ Yes. If yes, continue with number 13. ☒ No. If no, skip to number 15. **MC-275**

13. a. (1) Name of court: _____
 (2) Nature of proceeding (for example, "habeas corpus petition"): _____
 (3) Issues raised: (a) _____
 (b) _____
 (4) Result (Attach order or explain why unavailable): _____
 (5) Date of decision: _____
- b. (1) Name of court: _____
 (2) Nature of proceeding: _____
 (3) Issues raised: (a) _____
 (b) _____
 (4) Result (Attach order or explain why unavailable): _____
 (5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:

October 22 2007

► 

(SIGNATURE OF PETITIONER)

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Rosita Frausto

The State of California
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Court Attorney Unknown

Rosita Frausto
9000 Cottonwood Avenue
Santee, CA 92071
CDC# 7761577

07CV-2073 BEN CAB

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | |
|----------------------------|----------------------------|---|---|
| PT | DEF | | DEF |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. <input type="checkbox"/> Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(a)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input checked="" type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE 10/26/2007

SIGNATURE OF ATTORNEY OF RECORD

R. Muley